



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
 United States Patent and Trademark Office
 Address: COMMISSIONER OF PATENTS AND TRADEMARKS
 Washington, D.C. 20231
 www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/778,543	02/07/2001	Glenn R. Godley	6253-28	5035

7590

12/10/2002

LAW OFFICES OF JOHN D. GUGLIOTTA, PE, ESQ.
 202 DELAWARE BUILDING
 137 SOUTH MAIN STREET
 AKRON, OH 44308

EXAMINER

SOTOMAYOR, JOHN

ART UNIT

PAPER NUMBER

3714

DATE MAILED: 12/10/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/778,543

Applicant(s)

GODLEY, GLENN R.

Examiner

John L Sotomayor

Art Unit

3714

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 October 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,4-16,18 and 19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,4-6,8-15,18 and 19 is/are rejected.
- 7) ☒ Claim(s) 7 and 16 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 07 February 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: |

DETAILED ACTION

Response to Amendment

1. In response to the amendment filed October 9, 2002, claims 3 and 17 are cancelled and claims 1-2, 4-16 and 18 and the newly added claim 19 are pending.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 4-6 and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Yu (US 5,726,629).
4. Regarding claims 1 and 18, Yu discloses an apparatus with a presence sensing detector wherein the system initiates playback of a predetermined message upon detection of the presence of a subject, contained within a housing (Col 2, lines 6-43) for the subject to hear.
5. Regarding claim 4, Yu discloses a system for recording sounds that are audible to animals (Col 2, lines 48-60).
6. Regarding claim 5, Yu discloses a system that contains a movement sensing device (Col 2, lines 20-22).
7. Regarding claim 6, Yu discloses a system with a light sensing device for detecting the absence of light (Col 2, lines 20-22).

Art Unit: 3714

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

10. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Yu. Yu discloses a system containing an announcement device with a selection of prerecorded messages that may be recorded by the manufacturer or by the purchaser (Col 2, lines 48-60). Yu does not specifically disclose that these messages are selectable by a selector switch. However, it is common and well known practice to include a selection switch on a device with multiple recorded sounds to allow the selection of the desired sound to issue from the device. Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to provide a selector switch for the user to choose a desired prerecorded sound from the playback unit.

11. Claims 9-14, and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yu in view of Hicks (US 3,847,120).

Art Unit: 3714

12. Regarding claim 9, Yu discloses a system with a sensor to detect the presence of a subject and playback a prerecorded audio message (Col 2, lines 8-43). Yu does not specifically disclose that the system includes a perch for a bird. However, Hicks teaches an instructional device for a bird which, upon detection of a bird, plays back a prerecorded message and this device includes a perch for a bird (Fig. 1). Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention in an audio message playback system with a presence detection sensor for a bird to provide a perch upon which a bird may land. Combining the system disclosed by Yu with the teaching of Hicks provides an audio playback system that may readily detect the presence of an avian subject and playback a prerecorded message for instruction of the bird at that time.

13. Regarding claim 10, Yu discloses a system with a sensor to detect the presence of a subject and playback a prerecorded audio message (Col 2, lines 8-43). Yu does not specifically disclose that the system includes a perch for a bird. However, Hicks teaches an instructional device for a bird which, upon detection of a bird, plays back a prerecorded message and this device includes a perch for a bird that may be detached from the unit (Fig. 2). Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention in an audio message playback system with a presence detection sensor for a bird to provide a perch upon which a bird may land and to provide means for removing said perch to inactivate the system. Combining the system disclosed by Yu with the teaching of Hicks provides an audio playback system that may readily detect the presence of an avian subject and playback a prerecorded message and cease activity upon the deletion of the perch.

14. Regarding claims 11-12, Yu discloses a system with a sensor to detect the presence of a subject and playback a prerecorded audio message (Col 2, lines 8-43). Yu does not specifically disclose that the system includes a mirror attached to the housing of the playback unit. However, Hicks teaches an instructional device for a bird which, upon detection of a bird, plays back a prerecorded message and this device includes a mirror (Col 2, lines 56-57) attached to the housing for use in hiding the functional device from the bird so as not to alarm the animal while playing the prerecorded message. Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention in an audio message playback system with a presence detection sensor for a bird to provide a mirror to prolong the presence of the bird during message playback. Combining the system disclosed by Yu with the teaching of Hicks produces an audio message playback system with a greater capacity for a bird subject to hear and emulate the prerecorded message based upon longer exposure to the message.

15. Regarding claims 13-14, Yu discloses a system with a sensor to detect the presence of a subject and playback a prerecorded audio message (Col 2, lines 8-43). Yu does not specifically disclose that the system is attached to a birdcage through the use of a bracket. However, Hicks teaches an instructional device for a bird which, upon detection of a bird, plays back a prerecorded message and this device may be attached to a birdcage through the use of a bracket (Fig. 2). Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention in an audio message playback system with a presence detection sensor for a bird to attach said unit to a birdcage through the use of a bracket. Combining the system disclosed by Yu with the teaching of Hicks produces an audio message playback system that may be better used to train a bird subject.

Art Unit: 3714

16. Regarding claim 19, Yu discloses an apparatus with a presence sensing detector wherein the system initiates playback of a predetermined message upon detection of the presence of a subject, contained within a housing (Col 2, lines 6-43) for the subject to hear. Yu does not specifically disclose that the housing contains a mirror affixed to the front portion, or that a perch assembly is coupled to the lower portion of the housing. However, Hicks teaches an instructional device for a bird which, upon detection of a bird, plays back a prerecorded message which includes a mirror affixed to the front portion of the device, and a perch assembly coupled to the lower portion of the housing (Fig. 2). Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention in an audio message playback system with a presence detection sensor configured to playback sounds to a bird to include a mirror and perch assembly in the apparatus. Combining the system disclosed by Yu with the teaching of Hicks produces a prerecorded message playback system well configured for the use of an avian subject.

17. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Yu in view of Blake et al (6,114,963). Yu discloses an apparatus with a presence sensing detector wherein the system initiates playback of a predetermined message upon detection of the presence of a subject, contained within a housing (Col 2, lines 6-43). Yu does not specifically disclose that the sensor detection system may be freestanding. However, Blake et al teaches a sensor detection assembly that is freestanding with an opening for the detection of objects moving through the frame (Fig. 2). Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to provide a housing for the sensor detection assembly of the recording playback device that was freestanding. Combining the system disclosed by Yu with the teaching of Blake et al produces a system that may be used in a plurality of locations independently.

Allowable Subject Matter

18. Claims 7 and 16 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

19. Applicant's arguments with respect to claims 1-2, 4-16, 18 and 19 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

20. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

21. A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

Art Unit: 3714

however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

22. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

23. Molinick et al (US 4,288,789) for a discussion of a presence detection device with prerecorded verbal messages.

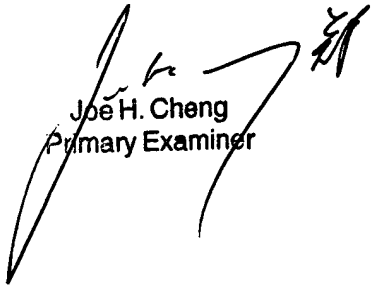
24. Any inquiry concerning this communication or earlier communications from the examiner should be directed to John L Sotomayor whose telephone number is 703-305-4558.

The examiner can normally be reached on 6:30-4:00 M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tom Hughes can be reached on 703-308-1806. The fax phone numbers for the organization where this application or proceeding is assigned are 703-308-7768 for regular communications and 703-308-7768 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-305-4558.

jls
December 6, 2002


Joe H. Cheng
Primary Examiner